

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**C.G., et al.,
Plaintiffs**

v.

**THE COMMONWEALTH OF
PENNSYLVANIA DEPARTMENT OF
EDUCATION, and SECRETARY
GERALD ZAHORCHAK,
Defendants**

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Civil Action No. 1:06-cv-1523

(Chief Judge Kane)

MEMORANDUM ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 9, 2009, Plaintiffs filed a motion for summary judgment which included multiple exhibits. Among them was Exhibit Z, an affidavit written by L.C., the mother of named Plaintiff K.C. (Doc. No. 109-34 at 14.) Though the document appears to be signed by L.C., the signature is redacted and the document is written entirely in Spanish. (*Id.*) On November 12, 2009, as an attachment to their brief in opposition to Defendants' motion for summary judgment, Plaintiffs filed Exhibit Z-1, an unsigned translation of L.C.'s declaration. (Doc. No. 149-4.) On December 18, 2009, Defendants moved to strike paragraphs three and six of the affidavit as inadmissible hearsay and to strike the entirety of Exhibit Z-1 as an unauthenticated translation. (Doc. No. 155.) On January 4, 2010, Plaintiffs filed "Amended Document Z-1," an authenticated translation of Exhibit Z. (Doc. No. 163, 163-2.) Plaintiffs did not, however, file a brief in opposition to Defendants' motion to strike paragraphs three and six of Exhibits Z and Z-1. On January 22, 2010, Defendants filed a reply brief to their motion to strike, accepting Plaintiffs' authenticated translation but reiterating their desire to strike paragraphs three and six therein as hearsay.

The Local Rules provide that “any party opposing any motion shall file a brief in opposition Any party who fails to comply with this rule shall be deemed not to oppose such motion.” M.D. Pa. L.R. 7.6. Moreover, the Court agrees with Defendants that paragraphs three and six of Exhibit Z and Amended Exhibit Z-1 refer to statements made by unidentified declarants being proffered for the truth of the matters asserted, and therefore are hearsay statements that should not be considered at summary judgment. See Blackburn v. United Parcel Serv., Inc., 179 F.3d 81, 95 (3d Cir. 1999) (hearsay statements not admissible at trial should not be considered on a summary judgment motion). Therefore, the paragraphs will be stricken.

ACCORDINGLY, this 2nd day of July 2010, upon consideration of Defendants’ motion to strike paragraphs three and six of Plaintiffs’ Exhibit Z and Amended Exhibit Z-1 (Doc. No. 155), **IT IS HEREBY ORDERED THAT** the motion is **GRANTED**. Paragraphs three and six of Plaintiffs’ Exhibit Z (Doc. No. 109-34 at 14) and Plaintiffs’ Amendment Exhibit Z-1 (Doc. No. 163) are **HEREBY STRICKEN**.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court
Middle District of Pennsylvania